

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ILLINOIS, NORTHERN DIVISION

JUN 13 2012 *new*

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

HERBERT F. SMITH, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NUMBER: 1:12-cv-00902

HONORABLE RONALD A. GUZMAN

PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS

The Petitioner, Herbert F. Smith, Jr. (hereinafter "Smith"), and for his Motion for Judgment on the Pleadings pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, relative to his pending Motion for Relief under 28 U.S.C. Section 2255, states as follows:

1. On February 6, 2012, Smith filed his Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. Section 2255 and Memorandum of Law in Support thereof.

2. On or about February 24, 2012, Smith filed his Supplemental Memorandum of Law in Support thereof.

3. On April 4, 2012, the United States of America's (hereinafter "the Government") Motion for Extension to file its Answer was granted. The Government was given until May 28, 2012 to file its Answer.

4. The Government was subsequently given additional time, by this Court to file its Answer, up through June 11, 2012.

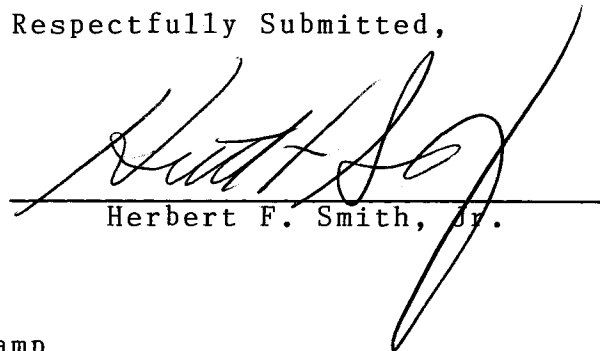
5. On June 4, 2012, the Court revised this Order and ordered the Government to have its Response on file by June 5, 2012.

6. As of June 8, 2012, the Government has failed to file its Response.

7. Under Rule 12(b), the Petitioner is asking that for all the reasons stated in his Motion for Relief under 28 U.S.C. Section 2255 and the Memorandum of Law and two (2) Supplemental Memorandums of Law, that this Court granting his Motion for Relief under 28 U.S.C. Section 2255 Setting aside this Court's Sentence dated July 26, 2011 and enter a new Sentencing Order pursuant to Smith's Sentencing Memorandum that is attached to this Motion as an Exhibit, without delay.

Wherefore, the Petitioner, Herbert F. Smith, Jr. hereby respectfully requests that this Honorable Court grant his Motion for Judgment on the Pleadings and award any further relief it deems appropriate.

Respectfully Submitted,



Herbert F. Smith, Jr.

Herbert F. Smith, Jr., J.D.  
Beckely FCI/Federal Satellite Camp  
Reg. No.: 41514-424  
P.O. Box 350  
Beaver, WV 25813

**EXHIBIT "A"**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ILLINOIS, NORTHERN DIVISION

HERBERT F. SMITH, JR.,	)	
	)	
Petitioner,	)	CASE NUMBER: 1:12-cv-00902
	)	
vs.	)	HONORABLE RONALD A. GUZMAN
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

SENTENCING MEMORANDUM

The Petitioner, Herbert F. Smith, Jr. (hereinafter "Smith"), and for his Sentencing Memorandum, states as follows:

During the first Sentencing Hearing that occurred on July 26, 2011, this Court concluded, after considering the factors contained in 18 U.S.C. Section 3553(a), that a low end sentence under Offense Level 24 of 51 months incarceration was sufficient, but not greater than necessary in considering the factors contained in Section 3553(a).

Subsequent to this Court granting his Motion for Relief under 28 U.S.C. Section 2255, Smith requests that this Court correct his his sentence by making a technical change reducing his Offense Level to 22 and months of incarceration to 41, the low end of Offense Level 22, a sentence that is again sufficient, but not greater than necessary in considering the same factors once again in Section 3553 (a) that it did during the first Sentencing Hearing.

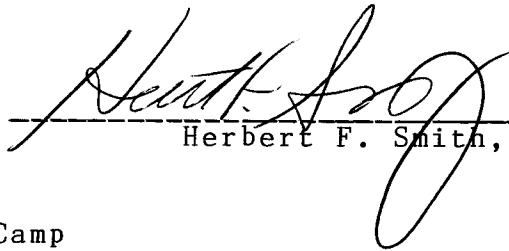
This case is somewhat similar to other cases where a technical adjustment is simply made to the applicable guidelines such as crack cocaine cases. A do-over or resentencing under a technical

change situation is not necessary.

Smith is scheduled to begin the Residential Drug Abuse Program at Beckely Satellite Camp in July, 2012, and requiring Smith's physical presence for a do-over resentencing could ultimately result in his removal from the program.

Smith is requesting that this Court consider these factors when entering the Sentencing Phase following consideration of Smith's Motion for Relief under 28 U.S.C. Section 2255.

Respectfully Submitted,

  
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Herbert F. Smith, Jr.

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Beckely FCI/Federal Satellite Camp  
Reg. No.: 41514-424  
P.O. Box 350  
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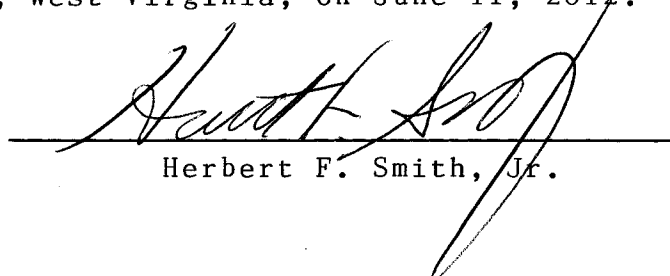
HONORABLE RONALD A. GUZMAN

NOTICE OF SERVICE

To: Prisoner Correspondence  
Clerk's Office  
U.S. District Court  
219 S. Dearborn Street  
Chicago, IL 60604

Mr. Brian Netols  
U.S. Attorney's Office  
219 S. Dearborn Street, Suite 500  
Chicago, IL 60604

I, Herbert F. Smith, Jr., state that I caused a copy of  
Petitioner's Motion for Judgment on the Pleadings to be  
served upon the above by depositing the same regular mail in a  
prepaid envelope, at the mail chute located at Beckely Federal  
Satellite Camp, West Virginia, on June 11, 2012.

  
Herbert F. Smith, Jr.